

§ 21.3021 Definitions.

(a) *Eligible person* means:

(1) A child of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability.

(iii) Veteran, serviceman or service-woman who has a total disability permanent in nature resulting from a service-connected disability.

(iv) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(2) The surviving spouse of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability, arising out of active military, naval or air service after the beginning of the Spanish-American War. (See §§ 3.6(a) and 3.807 of this chapter.)

(3) The spouse of a:

(i) Veteran, serviceman or service-woman who has a total disability permanent in nature resulting from a service-connected disability.

(ii) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(b) *Child* means a son or daughter of a veteran as defined in § 3.807(d) of this chapter. The term includes a child of a Philippine Commonwealth Army veteran and a Philippine Scout (designated as a *New Philippine Scout* under 38 U.S.C. 3566(b)), as defined in § 3.40(b), (c), or (d) of this chapter, but educational assistance allowance may not be authorized based on such service for any period before September 30, 1966.

(c) *Wife and widow, spouse and surviving spouse.* The terms *wife* and *widow* mean an individual as defined in § 3.807(d) of this chapter and the terms *spouse* and *surviving spouse* shall have the same respective meaning when used in the regulations in part 21, Title 38, Code of Federal Regulations. Educational assistance allowance may not be authorized for any such individuals for any period before December 1, 1968.

(Authority: 38 U.S.C. 3500, 3501, and 3511)

(d) *Parent or guardian* means a natural or adoptive parent, a fiduciary legally appointed by a court of competent jurisdiction or any person who is determined to be otherwise legally vested with the care of the eligible person (38 U.S.C. 3501(a)(4)) or it may be the eligible person if he or she has attained majority under laws applicable in his or her State of residence as shown on the application and is under no known legal disability. (38 U.S.C. 3501(b)) The eligible person may be designated as the person by whom required actions may be taken even though he or she has not attained majority, or having attained majority, is under a legal disability, when it is determined that to do otherwise would not be in his or her best interest, would result in undue delay or would not be administratively feasible. Where necessary to protect his or her interest and there is reason why the eligible person should not act for himself or herself, some other individual may be designated as the person by whom required actions should be taken.

(Authority: 38 U.S.C. 3501(c))

(e) *Armed Forces*, as to service by the eligible person, means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the Reserve components of each, the National Guard of the United States and the Air National Guard of the United States. (38 U.S.C. 3501 (a)(3) and (d) and 3512(a)) Effective December 31, 1970, the term includes the National Oceanic and Atmospheric Administration, the Environmental Science Services Administration and the Coast and Geodetic

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Survey, as to full-time duty of officers commissioned therein.

(Authority: 38 U.S.C. 101(21)(C))

(f) *Duty with the Armed Forces*, as to service by the eligible person, means active duty, active duty for training for a period of 6 or more consecutive months, or an initial period of active duty for training of not less than 3 months or more than 6 months in the Ready Reserve. (38 U.S.C. 3501(a)(3) and (d), 3512(a)) See §§ 21.3041 and 21.3042.

(g) *State* means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the Canal Zone. (38 U.S.C. 101(20)) (Although the Republic of the Philippines is not included in the definition of a State, eligible persons may pursue courses of training in that country.)

(h) *Program of education*. The term *program of education* means any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective.

(Authority: 38 U.S.C. 3501(a)(5))

(i) *Educational objective*. An educational objective is one that leads to the awarding of a diploma, degree, or certificate which reflects educational attainment.

(Authority: 38 U.S.C. 3501(a)(5))

(j) *Professional or vocational objective*. A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3501(a)(5))

(k) *School, educational institution, institution*. The terms *school, educational institution* and *institution* mean:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private secondary school;

(4) A training establishment as defined in § 21.4200(c); or

(5) An institution that provides specialized vocational training, generally recognized as on the secondary school level or above, for people with mental or physical disabilities.

(Authority: 38 U.S.C. 3501(a)(6), 3535)

(l) *Disabling effects of chronic alcoholism*. (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3512(b))

(m) *Additional definitions*. The definitions of all terms that are defined in §§ 21.1029 and 21.4200 but that are not defined in this section apply to subpart C of this part.

(Authority: 38 U.S.C. 501, 3501)

CROSS REFERENCES: *Duty periods*. See § 3.6 of this chapter.

Persons included. See § 3.7 of this chapter.

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Philippine and insular forces. See §3.40 of this chapter.

[36 FR 2508, Feb. 5, 1971, as amended at 38 FR 12110, May 9, 1973; 43 FR 35290, Aug. 9, 1978; 61 FR 26108, May 24, 1996; 61 FR 29295, June 10, 1996; 62 FR 51784, Oct. 3, 1997; 64 FR 23771, May 4, 1999]

§ 21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in §21.4022 of this part. The provisions of law are:

- (a) 38 U.S.C. chapter 30,
- (b) 38 U.S.C. chapter 31,
- (c) 38 U.S.C. chapter 32,
- (d) 38 U.S.C. chapter 34,
- (e) 10 U.S.C. chapter 1606,
- (f) 10 U.S.C. chapter 107,
- (g) Section 903 of the Department of Defense Authorization Act, 1981,
- (h) The Hostage Relief Act of 1980, and
- (i) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681)

[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29798, July 7, 1992; 61 FR 20728, May 8, 1996]

§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) *Child; age 18.* A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on

school attendance on or after the age of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance for periods, including vacation periods, prior to the commencement of educational assistance.

(b) *Child; under 18 or helpless.* Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line.

(c) *Child; election.* An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

(2) An election based on erroneous information furnished by an authorized